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8  
9 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12  
13 In the Matter of the Accusation Against,

14 **DAVID DAESUNG KIM, M.D.**  
15 **5204 Colleyville Blvd.**  
**Colleyville, TX 76034-5829**

16 **Physician's and Surgeon's Certificate**  
17 **No. G 66683**

18 Respondent.

Case No. 800-2018-050601

**DEFAULT DECISION**  
**AND ORDER**

[Gov. Code, §11520]

19  
20 **FINDINGS OF FACT**

21 1. On or about March 7, 2019, Complainant Kimberly Kirchmeyer, in her official  
22 capacity as the Executive Director of the Medical Board of California, Department of Consumer  
23 Affairs, filed Accusation No. 800-2018-050601 against David Daesung Kim, M.D. (Respondent)  
24 before the Medical Board of California.

25 2. On or about August 14, 1989, the Medical Board of California (Board) issued  
26 Physician's and Surgeon's Certificate No. G 66683 to Respondent. The Physician's and Surgeon's  
27  
28

1 Certificate expired on September 30, 2018, and has not been renewed. (Exhibit Packet, Exhibit 1<sup>1</sup>,  
2 Certificate of Licensure.)

3 3. The United States Attorney's Office in the Northern District of Texas prosecuted  
4 Respondent for receiving a bribe or kickback for patient referrals and for making a false statement  
5 on his tax return. On August 31, 2018, in Case No. 3:16-CR-00516, Respondent pleaded guilty to  
6 Count Six of the United States' Superseding Indictment against him, which charged him with  
7 soliciting or receiving illegal remuneration, including receiving a bribe or kickback in the amount  
8 of \$150,000, in exchange for referring his patients to a particular hospital, a felony, in violation of  
9 the United States Code, title 42, sections 1320a-1320a-7b; and title 18, section 2. Also on August  
10 31, 2018, in Case No. 3:18-CR-00446, Respondent pleaded guilty to Count One of the United  
11 States' Information against him, which charged him with making a false statement on his tax  
12 return, a felony, in violation of the United States Code, title 26, section 7206(1). (Exhibit Packet,  
13 Exhibit 2, Accusation, Related Documents, and Declaration of Service.)

14 4. On October 19, 2018, Respondent entered into an Agreed Order of Voluntary  
15 Revocation ("Revocation Order") with the Texas Medical Board, revoking Respondent's Texas  
16 medical license. The Revocation Order is based on the Texas Medical Board's authority to take  
17 disciplinary action against Respondent for his conviction of a felony offense. Specifically, the  
18 Revocation Order is based on the Texas Medical Board's finding that Respondent had agreed to  
19 plead guilty to felony offenses in the two federal criminal cases in the Northern District of Texas  
20 referenced above: Case Nos. 3:16-CR-00516 and 3:18-CR-00446. (Exhibit Packet, Exhibit 2,  
21 Accusation, Related Documents, and Declaration of Service.)

22 5. On January 22, 2019, the Board notified Respondent of the suspension of his  
23 Physician's and Surgeon's Certificate under Business and Professions Code, section 2310, based  
24 on the Texas Medical Board's revocation of Respondent's license to practice medicine in Texas,  
25 on October 19, 2018. (Exhibit Packet, Exhibit 3, Notice of Out of State Suspension Order.)  
26  
27

28 <sup>1</sup> The evidence in support of this Default Decision and Order is submitted herewith as the  
"Exhibit Packet."

6. On or about March 7, 2019, an employee of the Board, served by Certified and First Class Mail a copy of the Accusation No. 800-2018-050601, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 5204 Colleyville Blvd. Colleyville, TX 76034-5829. (Exhibit Packet, Exhibit 2, Accusation, Related Documents, and Declaration of Service.) Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

7. On or about March 25, 2019, an employee of the Attorney General's Office served by Certified and First Class Mail addressed to the Respondent at 5204 Colleyville Blvd. Colleyville, TX 76034-5829 a Courtesy Notice of Default. The Courtesy Notice of Default with a copy of the Accusation and Notice of Defense advised Respondent that he was in default; that he should take immediate action and file a Notice of Defense; and cautioned him that a decision would be rendered by the Board without hearing if he did not take action. (Exhibit Packet, Exhibit 4, Courtesy Notice of Default, Related Documents, and Declaration of Service.)

8. On or about April 4, 2019, the aforementioned documents were returned by the U.S. Postal Service marked "Not Deliverable as Addressed, Unable to Forward." (Exhibit Packet, Exhibit 5, Copy of Envelope Returned by the Post Office.)

## STATUTORY AUTHORITY

9. Business and Professions Code section 118 states, in pertinent part:

"(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the license on any such ground."

10. Government Code section 11506 states, in pertinent part:

"(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

11. The Board served the Respondent at Respondent's designated address of record. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 800-2018-050601.

12. California Government Code section 11520 states, in pertinent part:

"(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent."

13. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in Exhibit Packet, Exhibits 1, 2, 3, 4, and 5, finds that the allegations in Accusation No. 800-2018-050601 are true.

14. Section 2236 of the Code states:

“(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

• • •

(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.”

15. Section 2305 of the Code states:

1       “The revocation, suspension, or other discipline, restriction or limitation imposed by  
2 another state upon a license or certificate to practice medicine issued by that state, or the  
3 revocation, suspension, or restriction of the authority to practice medicine by any agency of the  
4 federal government, that would have been grounds for discipline in California of a licensee under  
5 this chapter [Chapter 5, the Medical Practice Act] shall constitute grounds for disciplinary action  
6 for unprofessional conduct against the licensee in this state.”

7       16. Section 141 of the Code states:

8       “(a) For any licensee holding a license issued by a board under the jurisdiction of the  
9 department, a disciplinary action taken by another state, by any agency of the federal government,  
10 or by another country for any act substantially related to the practice regulated by the California  
11 license, may be a ground for disciplinary action by the respective state licensing board. A  
12 certified copy of the record of the disciplinary action taken against the licensee by another state,  
13 an agency of the federal government, or another country shall be conclusive evidence of the  
14 events related therein.

15       “(b) Nothing in this section shall preclude a board from applying a specific statutory  
16 provision in the licensing act administered by that board that provides for discipline based upon a  
17 disciplinary action taken against the licensee by another state, an agency of the federal  
18 government, or another country.”

19                                   **DETERMINATION OF ISSUES**

20       1. Respondent’s August 31, 2018 felony criminal convictions are substantially related to  
21 the qualifications, functions, and duties of a physician and surgeon. As such, each of his  
22 convictions constitutes a violation of Code section 2236 (criminal conviction).

23       2. Respondent’s conduct and the action of the Texas Medical Board as set forth above  
24 are substantially related to the practice of medicine and constitute unprofessional conduct within  
25 the meaning of Code section 2305 (out-of-state discipline) and conduct subject to discipline  
26 within the meaning of Code section 141(a) (out-of-state discipline).

3. Pursuant to the foregoing Findings of Fact, Respondent's conduct and the action of the Texas Medical Board constitute cause for discipline under Code section 2236 (criminal conviction), section 2305 (out-of-state discipline), and section 141(a) (out-of-state discipline).

## ORDER

IT IS SO ORDERED that Physician's and Surgeon's Certificate No. G 66683, heretofore issued to Respondent David Daesung Kim, M.D., is **REVOKED**.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The Board in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on June 19, 2019, at 5 p.m.

It is so ORDERED May 20, 2019

Kimberly Kirchmeyer, Executive Director  
FOR THE MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS

1 XAVIER BECERRA  
Attorney General of California  
2 MARY CAIN-SIMON  
Supervising Deputy Attorney General  
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Deputy Attorney General  
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7 Attorneys for Complainant

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO MARCH 7 2019  
BY [Signature] ANALYST

8  
9 BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
10 DEPARTMENT OF CONSUMER AFFAIRS  
11 STATE OF CALIFORNIA  
12

13 In the Matter of the Accusation Against:

Case No. 800-2018-050601

14 David Daesung Kim, M.D.  
5204 Colleyville Blvd.  
15 Colleyville TX 76034-5829

ACCUSATION

16 Physician's and Surgeon's Certificate  
17 No. G 66683,

Respondent.

18  
19  
20 Complainant alleges:

21 PARTIES

22 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official  
23 capacity as the Executive Director of the Medical Board of California, Department of Consumer  
24 Affairs (Board).

25 2. On August 14, 1989, the Board issued Physician's and Surgeon's Certificate Number  
26 G 66683 to David Daesung Kim, M.D. (Respondent). The certificate expired on  
27 September 30, 2018 and has not been renewed.

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3. On January 22, 2019, the Board notified Respondent of the suspension of his Physician's and Surgeon's Certificate under Business and Professions Code, section 2310, based on the Texas Medical Board's revocation of Respondent's license to practice medicine in Texas, on October 19, 2018. Respondent's certificate remains suspended as of the time of the filing of this Accusation.

## JURISDICTION

4. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2004 of the Code provides that the Board shall have the responsibility for the enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

6. Section 2227 of the Code authorizes the Board to take action against a licensee who has been found guilty under the Medical Practice Act by revoking his or her license, suspending the license for a period not to exceed one year, placing the license on probation and requiring payment of costs of probation monitoring, or taking such other action as the Board deems proper.

7. Section 2234 of the Code states, in part:

The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

• • •

8. Section 2236 of the Code states:

(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

...

(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.



9. Section 141 of the Code states as follows:

(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.

10. Section 2305 of the Code states as follows:

The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

11. California Code of Regulations, title 16, section 1360, states:

For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act.

**FIRST CAUSE FOR DISCIPLINE**

**(Criminal Convictions)**

12. The United States Attorney's Office in the Northern District of Texas prosecuted Respondent for receiving a bribe or kickback for patient referrals and for making a false statement on his tax return. On August 31, 2018, in Case No. 3:16-CR-00516, Respondent pleaded guilty to Count Six of the United States' Superseding Indictment against him, which charged him with soliciting or receiving illegal remuneration, including receiving a bribe or kickback in the amount of \$150,000, in exchange for referring his patients to a particular hospital, a felony, in violation of

1 the United States Code, title 42, sections 1320a-1320a-7b; and title 18, section 2. Also on August  
2 31, 2018, in Case No. 3:18-CR-00446, Respondent pleaded guilty to Count One of the United  
3 States' Information against him, which charged him with making a false statement on his tax  
4 return, a felony, in violation of the United States Code, title 26, section 7206(1).

5 13. Respondent's August 31, 2018 felony criminal convictions are substantially related to  
6 the qualifications, functions and duties of a physician and surgeon. As such, each of his  
7 convictions constitutes a violation of Code section 2236 (criminal conviction) and section 2234  
8 (unprofessional conduct).

### 9 SECOND CAUSE FOR DISCIPLINE

#### 10 (Discipline, Restriction, or Limitation Imposed by Another State)

11 14. On October 19, 2018, Respondent entered into an Agreed Order of Voluntary  
12 Revocation ("Revocation Order") with the Texas Medical Board, revoking Respondent's Texas  
13 medical license. The Revocation Order is based on the Texas Medical Board's authority to take  
14 disciplinary action against Respondent for his conviction of a felony offense. Specifically, the  
15 Revocation Order is based on the Texas Medical Board's finding that Respondent had agreed to  
16 plead guilty to felony offenses in the two federal criminal cases in the Northern District of Texas  
17 referenced above: Case Nos. 3:16-CR-00516 and 3:18-CR-00446. The Revocation Order is  
18 attached and incorporated as **Exhibit A**.

19 15. Respondent's conduct and the action of the Texas Medical Board as set forth above  
20 are substantially related to the practice of medicine and constitute unprofessional conduct within  
21 the meaning of Code section 2305 and conduct subject to discipline within the meaning of Code  
22 section 141(a).

### 23 PRAYER

24 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
25 and that following the hearing, the Medical Board of California issue a decision:

26 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 66683,  
27 issued to Respondent;

28 ///

2. Revoking, suspending, or denying approval of Respondent's authority to supervise physician assistants and advanced practice nurses;
3. Ordering Respondent, if placed on probation, to pay the Board the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: March 7, 2019

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
*Complainant*

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## **Exhibit A**

IN THE MATTER OF  
THE LICENSE OF  
DAVID DAESUNG KIM, M.D.

LICENSE NO. L-6982

BEFORE THE  
TEXAS MEDICAL BOARD

AGREED ORDER OF VOLUNTARY REVOCATION

On the 19 day of October 2018, came on to be heard before the Texas Medical Board (Board), duly in session, the matter of the license of David Daesung Kim, M.D. (Respondent).

By the signature of Respondent on this Order, Respondent waives the right to appear at an Informal Show Compliance Proceeding and Settlement Conference ("ISC") pursuant to TEX. OCC. CODE, Title 3, Subtitle B, §164.004 and 22 TEX. ADMIN. CODE, §187.18 and all rights pursuant to TEX. GOV'T CODE, §2001.051 and §2001.054, including, but not limited to the right to notice and hearing, and instead agrees to the entry of this Order to resolve the matters addressed in this Order. Respondent was represented by counsel, Stacy L. Brainin. Samer Shobassy prepared this order.

With the consent of Respondent, the Board makes the following Findings and Conclusions of Law and enters this Agreed Order.

FINDINGS

The Board finds that:

1. Respondent received all notice required by law. All jurisdictional requirements have been satisfied. Respondent waives any defect in notice and any further right to notice or hearing under the Medical Practice Act, Title 3, Subtitle B, Texas Occupations Code (Act) or the Rules of the Board.
2. Respondent currently holds Texas Medical License No. L-6982. Respondent was originally issued this license to practice medicine in Texas on August 15, 2003.
3. Respondent is primarily engaged in the practice of bariatric surgery. Respondent is board certified in by the American Board of Surgery, a member of the American Board of Medical Specialties.
4. Respondent is 56 years of age.

5. Respondent agreed to plead guilty to certain felony offenses charged in two matters, Case No. 3:16-cr-00516 and Case No. 3:18-cr-00446, both filed in the Northern District of Texas – Dallas Division.

6. By Respondent's signature on this Agreed Order, Respondent requests that the voluntary surrender of his Texas Medical License be accepted in lieu of further disciplinary proceedings and that the voluntary surrender of his Texas Medical License become effective on the date of the entry of this Agreed Order.

7. Respondent has cooperated in the investigation of the allegations related to this Agreed Order. Respondent neither admits nor denies the allegations. To avoid further investigation, hearings, and the expense and inconvenience of litigation, Respondent agrees to the entry of this Agreed Order and to comply with its terms and conditions.

#### CONCLUSIONS OF LAW

Based on the above Findings, the Board concludes that:

1. The Board has jurisdiction over the subject matter and Respondent pursuant to the Act.

2. This Order is based on Findings No. 5, and the specific authority of Section 164.051(a)(2)(A) of the Act, which authorizes the Board to take disciplinary action against Respondent for Respondent's conviction of a felony offense.

6. Section 164.001(a)(1) of the Act authorizes the Board to suspend or revoke Respondent's license or other authorization to practice.

7. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.

#### ORDER

Based on the above Findings and Conclusions of Law, the Board ORDERS that:

1. Respondent's Texas medical license is hereby REVOKED.
2. Respondent shall immediately cease practice in Texas. Respondent's practice in the state of Texas after the date of entry of this Agreed Order shall constitute a violation of this

Order, subjecting Respondent to disciplinary action by the Board or prosecution for practicing without a license in Texas.

3. Respondent shall comply with all the provisions of the Act and other statutes regulating the Respondent's practice.

4. Respondent may petition the Board for reissuance of his Texas Medical License after one year's time from the effective date of this Agreed Order. Respondent may apply for reissuance of his Texas Medical License pursuant to applicable Board Rules and Statutes, including but not limited to Sections 164.151 and 164.152, and Board Rules 163 and 167. The Board may inquire into the request for reissuance and, may in its sole discretion, grant or deny the petition without further appeal to or review by the Board. Petitions for reissuance may be filed only once a year thereafter. Respondent does not waive and specifically reserves his right to appeal any final decision of the Board regarding re-licensure to the State Office of Administrative Hearings.


RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

[SIGNATURE PAGES FOLLOW]

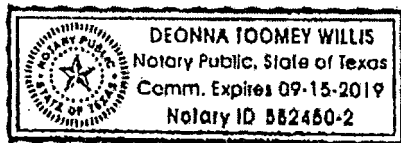
I, DAVID DAESUNG KIM, M.D., HAVE READ AND UNDERSTAND THIS AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: October 15, 2018.

  
DAVID DAESUNG KIM, M.D.  
Respondent

STATE OF Texas  
COUNTY OF Dallas

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public,  
on this 15th day of October, 2018.

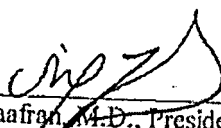


(Notary Seal)

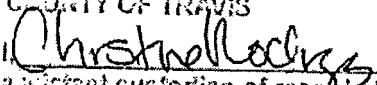
  
Signature of Notary Public




19 SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this  
day of October, 2018.

  
\_\_\_\_\_  
Sherif Z. Zaafran, M.D., President  
Texas Medical Board

COUNTY OF TRAVIS

  
\_\_\_\_\_  
Christa Rodas certify that I am an official  
assistant custodian of records for the Texas Medical Board  
and that this is a true and correct Copy of the original, as it  
appears on the file in this office.

Witness my official hand and seal of the BOARD.

This 3rd Day of January, 20 19  
  
\_\_\_\_\_  
Assistant Custodian of Records